UNITED NATIONS

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Security Council

Distr.
GENERAL

S/AC.26/1998/12
October 1998

Original: ENGLISH

UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING THE SECOND INSTALMENT OF "F1" CLAIMS

GE.98-64045

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Introduction

1. This is the third report submitted to the Governing Council of the United Nations Compensation Commission (the "Commission") pursuant to article 38(e) of the Provisional Rules for Claims Procedure (the "Rules") 1/ by the Panel of Commissioners appointed by the Governing Council at its twenty-first session on 22-23 July 1996 to review "F1" claims (the "Panel"). This report deals with the second instalment of "F1" claims.

2. The second instalment of claims was presented to the Panel in accordance with article 32 of the Rules on 30 January 1998. The instalment consists of the following seventeen claims (the "Claims") filed by fifteen Governments (the "Claimants") for a total amount of approximately 153 million United States dollars (US$). The approximate amount of compensation sought is indicated in parentheses after every claim. 2/

(a) Australia: Department of Foreign Affairs and Trade (two claims, one for US$563,329 ("Claim I") and the other for US$10,684 ("Claim II");

(b) The Republic of Austria: Foreign Trade Department (US$155,598);

(c) The Republic of Cyprus: Ministry of Communications and Works (US$267,156);

(d) The Czech Republic 3/: Ministry of Foreign Affairs (US$11,208);

(e) The Republic of India: Ministry of External Affairs (US$137,023,322);

(f) Ireland: Department of Foreign Affairs (US$557,955);

(g) The Italian Republic: Ministry of Foreign Affairs (US$659,303);

(h) Japan: Ministry of Foreign Affairs (US$1,431,252);

(i) The Republic of Korea: Ministry of Foreign Affairs (US$1,502,895);

(j) The Kingdom of Norway: Ministry of Foreign Affairs (US$157,217);

(k) The Republic of Poland: Ministry of Foreign Economic Relations, Office of Budget and Administration (US$1,824,720) and Ministry of Foreign Affairs, Administration and Finance Department (US$177,590);

(l) The Russian Federation: Ministry of Foreign Economic Relations (US$8,050,606);

(m) The Kingdom of Sweden: Ministry for Foreign Affairs (US$500,191);

(n) The United Kingdom of Great Britain and Northern Ireland: British Council (US$55,688); and

(o) The United States of America: Department of Commerce (US$94,442 plus interest).

I. PROCEEDINGS

3. In accordance with article 16 of the Rules, the Executive Secretary of the Commission reported the Claims to the Governing Council in his reports of 31 October 1996, 31 January 1997 and 30 April 1997. These reports were circulated to all Governments and international organizations that had filed claims before the Commission and to the Government of the Republic of Iraq ("Iraq"). A number of Governments, including Iraq, submitted additional information and views on the reports.

4. On 30 January 1998, the Panel issued procedural orders informing the Claimants that their claims were under review and classifying the Claims. The Panel determined that, with the exception of the claim submitted by the Government of India, it would review the Claims within 180 days, in accordance with article 38(c) of the Rules. In view of the amount of compensation sought and the anticipated complexity of the verification issues raised, the Panel classified the claim of the Indian Ministry of External Affairs as "unusually large or complex" pursuant to article 38(d) of the Rules.

5. In the course of the preliminary review of the Claims, it was noted that several Claimants sought compensation for costs incurred in evacuating individuals and for payments made to reimburse Government employees for the loss of personal property. As the individuals concerned might themselves have filed individual claims with the Commission in categories "C" and "D" for the same losses, the Panel was concerned that the Claims might be seeking compensation for losses that were the subject of category "C" or "D" claims. 1/

6. To avoid multiple recovery of compensation across categories, the procedural orders issued on 30 January 1998 also requested those Claimants seeking compensation for the evacuation of individuals or for reimbursements for individuals' losses of personal property to provide identification information which would enable the Panel to ascertain that compensation was not being sought for the same losses in other categories within the Commission. The relevant Claimants were requested to submit their responses by 31 March 1998.

7. Responses were received from all Claimants. On the basis of the responses it was ascertained that eight individuals had filed category "C" claims for losses which had either been incurred by their Government or in

respect of which they had received compensation from their Government. 5/ Appropriate deductions were made from the relevant Government claims in this instalment to avoid multiple recovery. 5/

8. The responses also enabled the secretariat to ascertain that five individuals were seeking compensation in category "D" claims for losses in respect of which they had received compensation from their Governments. A note was made of this fact in the relevant category "D" claim files and account will be taken of the compensation recommended when these claims are reviewed by the "D" Panel.

9. On 27 February 1998, the Panel issued procedural orders to nine Claimants requesting them to provide information and documents which it considered necessary properly to quantify the losses in the Claims. The relevant Claimants were requested to submit their responses to the procedural orders by 27 April 1998.

10. Four of the Claimants who had been requested to submit additional information requested the Panel to grant them an extension of the time limit set by the procedural order for filing their responses. In view of the strict time limits set by the Rules for the completion of its review of the Claims, the Panel rejected these requests.

11. The procedural order of 27 February 1998 addressed to the Indian Ministry of External Affairs expressed the Panel's intention to hold an on-site inspection to verify the Claim. An inspection team composed of two secretariat legal officers, a secretariat loss adjuster and two consultant loss adjusters performed the on-site inspection in India from 27 April to 1 May 1998.

12. As a result of the information collected in the course of the on-site inspection and the Government of India's cooperation in making the necessary arrangements for the inspection at short notice, the Panel was able to review the Indian Ministry of External Affairs claim in six months notwithstanding the Panel's initial classification of the Claim as unusually large or complex.

13. In reviewing the Claims, the Panel held regular meetings conducted in private at the Commission's headquarters in Geneva. Pursuant to article 34 of the Rules, the secretariat provided legal, administrative and technical support to the Panel. A consultant loss adjusting firm was retained to assist the Panel in the verification and valuation of the Claims.

II. THE CLAIMS

14. The standard claim form for category "F" claims contains the following general loss types: contract; business transaction or course of dealing; real property; other tangible property; bank accounts and securities; income-producing property; payment or relief to others; evacuation costs; public service expenditures; environmental damage;

depletion of natural resources and other losses. The claims in the present instalment raise seven of these twelve loss types. The next section of this report describes the Claims by loss type.

15. On a number of occasions the Panel considered it more appropriate to review a particular loss under a different classification from that under which it had been entered in the claim form. These losses are discussed below in accordance with their reclassification.

A. Contract

1. Australia

16. Australia seeks 18,581 Australian dollars (A$) in respect of reimbursements made to the Ambassador and Attaché of its Embassy in Iraq for lost personal property and foodstuffs pursuant to special regulations governing the employment relation of members of its diplomatic staff.

2. Austria

17. After the evacuation of Austrian diplomats from Kuwait, the residence of the Austrian Commercial Counsellor in Kuwait was left vacant for the period of the occupation of Kuwait. The Government of Austria asserts it had paid two years' rent in advance for these premises and seeks compensation for a total of 10,000 Kuwaiti dinars (KD) in respect of the rent paid for the eight months during which it was unable to use the residence.

3. India

18. India seeks compensation for rent paid in advance on its Chancery building and on the residences of members of its diplomatic mission in Kuwait because, following the evacuation of its diplomats, it was unable to use the premises. The Claimant seeks compensation in the amount of KD 31,110.

4. Italy

19. Pursuant to a Foreign Ministry decree, the Italian Government reimbursed 22 members of its diplomatic staff in Kuwait and Baghdad for personal property losses suffered. Compensation is sought for a total of 1,182,382,375 Italian lire in respect of such reimbursements.

5. The Republic of Korea

20. Pursuant to internal regulations, the Republic of Korea compensated 15 members of its diplomatic missions in Iraq and Kuwait for personal property and possessions they had to leave behind when they were evacuated

and which were subsequently damaged or stolen. The Claimant seeks a total of US$201,120 for the payments made to its employees.

6. The Russian Federation

21. The Russian Federation seeks compensation for payments made pursuant to a contract concluded with an Iraqi national for the guarding of its Trade Representation premises and car park in Baghdad. The contract was entered into in January 1991, when the members of the Claimant's Trade Representation left Iraq. Compensation is sought for the payments made to the guard for the months of January to March 1991 for a total of 27,000 Iraqi dinars (ID).

7. The United Kingdom

22. The United Kingdom seeks compensation for payments made by the British Council to three of its officers, two of whom were based in Kuwait and the other in Iraq, for personal property, including motor vehicles, that they lost as a result of the invasion and occupation of Kuwait. The Claimant seeks compensation for a total of 29,292 pounds sterling.

8. The United States

23. The United States seeks compensation for the loss of benefit of the lease of the residence of its Senior Commercial Officer in Kuwait. It asserts that, pursuant to the lease, one year's rent was paid in advance on 30 September 1989. As a result of the invasion and occupation of Kuwait, the Senior Commercial Officer was evacuated from Kuwait in August 1990. The Claimant seeks compensation for the loss of benefit of the lease for the months of August and September 1990 for a total of KD 1,400.

24. Pursuant to a law on reimbursement for personal property lost during emergency evacuations, the United States Commerce Department paid its Senior Commercial Officer in Kuwait the statutory maximum payable under the law in respect of his personal property losses. The United States seeks compensation for this reimbursement for a total of US$42,585.

B. Real property

1. The Czech Republic

25. The Czech Republic claims US$2,038 for costs incurred in cleaning its Embassy and staff residences in Baghdad of the debris caused by the military operations and in purchasing and fitting new windows in its Embassy. 1/

2. India

26. In the months prior to the invasion and occupation of Kuwait, an Embassy complex, consisting of the Chancery building and staff residences, was being constructed for the Indian diplomatic mission in Kuwait. India asserts that, during the occupation of Kuwait, the complex, which was nearly completed, suffered considerable damage, partly as a result of the military activity and partly because of looting. The Claimant seeks compensation for the costs incurred in repairing the Embassy complex for a total of KD 124,914.

3. The Russian Federation

27. The Russian Federation asserts that as a result of the bomb attacks on Baghdad, its Trade Representation building in Baghdad was damaged. Compensation is sought for the cost of purchasing glass and putty to replace shattered windows and the cost of fitting the new windows for a total of ID 2,512.506 and 1,415,000 Iranian rials.

C. Other tangible property

1. Austria

28. Austria asserts that, following the invasion and occupation of Kuwait, the Austrian Commercial Counsellor in Kuwait was evacuated and that his residence and the Austrian Embassy remained vacant for several months. In this period, a number of items of furniture, a motor vehicle and other tangible property at the residence and Embassy belonging to the Austrian Government were stolen or damaged. The Claimant seeks compensation for the cost of repairing or replacing such items in the amount of KD 34,818.

2. The Czech Republic

29. The Czech Republic states that the staff of the Embassy of the Czech and Slovak Federal Republic in Baghdad was evacuated in January 1991 and did not return until June 1991. During this period, the Embassy premises remained unattended and items of property were looted or damaged and foodstuffs were stolen or spoiled. The Claimant seeks compensation for the cost of repairing or replacing such items for a total of 152,694 Czechoslovak koruna.

3. India

30. India asserts that, during the period when the premises of its Chancery building and staff residences in Kuwait remained unattended following the evacuation of the members of the mission, two motor vehicles belonging to the mission were stolen. In addition, a number of household items and furniture provided by the Government for staff residences were

stolen or damaged. A total of KD 138,674 is sought for the cost of repairing or replacing such items.

4. Japan

31. Japan claims that, during the period of the occupation of Kuwait, tangible items, including three motor vehicles, supplied by the Government to the Embassy and to the residence of the Ambassador in Kuwait were lost or damaged as a result of the breakdown in civil order. The Claimant seeks compensation for a total of KD 862 and 17,453,766 Japanese yen for the cost of replacing such items.

5. Norway

32. Norway asserts that, during the period of the occupation of Kuwait, the residence of the Secretary of the Norwegian mission in Kuwait was looted. Compensation is sought for the cost of replacing the stolen items of furniture in the amount of 110,868 Norwegian krone.

6. The Russian Federation

33. The Russian Federation claims that "as a result of the multinational military action and missile and bomb shelling of Baghdad, Basra and Iraq's other cities the state organizations and firms of the former USSR sustained heavy losses to their property". According to the Claimant, the motor vehicles of the Trade Representation were damaged as a result of the shelling and the general unrest and looting that occurred during the period of military operations. The Claimant also asserts that medical instruments and medicines were stolen and foodstuffs were plundered from an out-patients' clinic. Compensation is sought for the cost of replacing or repairing the damaged and stolen items and foodstuffs for a total of US$2,215, ID 29,910 and 2,568 Russian roubles and an unquantified amount in respect of 6,000 litres of petrol stolen from the Trade Representation's storage tank.

D. Payment or relief to others

1. Australia

34. During the period following the invasion of Kuwait, the Australian missions in Kuwait and Jordan allegedly made a number of cash advances to Australian nationals who were leaving the area and were experiencing financial difficulties. Australia seeks compensation for a total of A$20,838 in respect of such cash advances.

2. Cyprus

35. Cyprus claims that it reimbursed Cyprus Airways the cost of additional insurance premiums for war risk insurance on flights to Cairo

during the period from 31 January to 2 February 1991. It seeks 17,382 Cyprus pounds as compensation for this payment.

3. India

36. India claims that three of its passport offices made cash advances to over 100,000 evacuees upon their arrival in India to assist them in the final stage of their homeward journey. The Ministry of Railways made similar advances to evacuees. India claims 42,114,140 Indian rupees in respect of such cash advances.

4. Ireland

37. Ireland asserts that in the months following the invasion and occupation of Kuwait, its Embassy in Baghdad made cash advances to some 20 individuals in financial difficulty. It seeks compensation for a total of ID 4,350 and US$20,540 in respect of these payments.

E. Evacuation costs

1. Australia

38. In Claim I, the Australian Department of Foreign Affairs and Trade seeks compensation for a total of A$255,108 in respect of costs it incurred in evacuating nationals and members of its diplomatic missions from a number of States in the Middle East.

39. The evacuation costs claimed include air fares, departure taxes on free tickets, stopover accommodation and excess baggage charges for 12 Australian nationals held hostage in Iraq and for members of the Australian missions in Iraq and Kuwait and their dependants.

40. The Claimant also seeks compensation for the cost of evacuating the dependants of members of its diplomatic missions in Tel Aviv, Damascus, Amman and Riyadh. Many of these individuals were not repatriated to Australia but, instead, were sent to designated "safehavens" in Cyprus, Italy and the United Kingdom where they spent prolonged periods of time. In addition to travel costs, the Claimant seeks compensation for accommodation in the safehavens and food allowances and per diem payments made to the evacuees during this period. Compensation is also sought for school fees paid for the evacuated daughter of one of the Claimant's diplomats stationed in Tel Aviv during her stay in Italy.

41. The Australian Embassy in Amman allegedly incurred costs of 4,551 Australian dollars in connection with the evacuation operations for the purchase of food, medical supplies, vehicle rental and excess baggage charges. The Claimant seeks compensation for such costs.

42. Claim II seeks compensation in the amount of 16,688 deutsche mark for the cost of overnight accommodation in Frankfurt and airfares from Frankfurt to their home cities in Australia for three Australian hostages evacuated from Baghdad to Germany by a third State.

2. Cyprus

43. Cyprus seeks compensation for additional hull and all liability war risks insurance for three special charter flights operated to evacuate Cypriots from Kuwait and Iraq and for two scheduled flights from Cyprus to Cairo in the week beginning 16 January 1991. Compensation is sought for a total of 100,968 Cyprus pounds.

3. The Czech Republic

44. The Czech Republic seeks compensation for costs incurred in the overland evacuation of the members of its diplomatic mission in Baghdad and in their return journey in June 1991. Such costs include petrol, motor way fares, food and accommodation for a total of US$3,740.

4. India

45. India asserts that at the time of the invasion of Kuwait over 100,000 Indian nationals were residing in Kuwait and some 8,000 in Iraq. During the period from August to November 1990, a complex evacuation operation was organized to repatriate these individuals by air and by ship. At the request of the Indian Ministry of External Affairs, Air India operated 546 flights, principally to Amman, but also to Dubai, Dahran, Jeddah and Riyadh, and repatriated over 114,000 people. As Air India did not have the capacity to operate all the flights with its own aircraft, it chartered aeroplanes from Indian Airlines and Aeroflot. The Indian Air Force was also involved in the evacuation and operated 24 flights to Amman, Baghdad, Basra and Dubai. In addition to setting up the airlift, the Indian Ministry of External Affairs also requested the Shipping Corporation of India to participate in the evacuation operations.

46. According to the Claimant, the greatest number of Indians fled to Jordan, from where they were flown to India after spending varying periods of time in temporary accommodation. A number of evacuees were also sent to Basra, from where they travelled, either on the Indian Air Force aeroplanes or by ship, to Dubai, from where they were then flown to India. Some 2,200 people were repatriated by ship. When the evacuees arrived in India, principally in Bombay, New Delhi and Cochin, those travelling onwards by train were provided with free rail passes to their final destination by the Ministry of Railways. The Claimant seeks compensation for the cost of the Air India, Indian Air Force and Shipping Corporation of India operations and for the rail passes supplied by the Ministry of Railways.

47. In addition to travel expenses, India also seeks compensation for the cost of purchasing food and other basic necessities for the evacuees and

for the cost of shipping the commodities to Jordan, where most of the evacuees were waiting to be repatriated. Compensation is also sought for expenses incurred by the Indian Embassies and General Consulates in Amman, Baghdad, Basra, Riyadh, Ankara, Abu Dhabi, Tehran, Jedda and Bahrain in organizing and carrying out the evacuation.

48. India also seeks compensation for the costs of an Indian Red Cross Society mission to Iraq and Kuwait to provide assistance to the Indian nationals awaiting repatriation. The costs relate to the purchase and transport of medicines, the Red Cross team's travel costs and other expenses it incurred on the relief mission.

49. India claims a total of US$129,874,609 in respect of evacuation costs.

5. Ireland

50. Ireland asserts that its Embassies in Amman, Baghdad, Bern, Bonn, London, Riyadh and Rome incurred expenses for a total of 73,002 Irish pounds in respect of evacuation costs. Such costs include the purchase of airline tickets to Ireland, stopover accommodation for evacuees, food, car rental, taxi fares and cash advances made to nationals in financial difficulties.

6. Japan

51. Japan asserts that it chartered aircraft to operate evacuation flights in September and December 1990. Japanese nationals in Iraq were flown to Amman or Bangkok and from there on to Japan. The Claimant seeks compensation for the cost of chartering the flights in the amount of US$360,000 and 125,000,000 Japanese yen.

7. The Republic of Korea

52. The Republic of Korea seeks compensation for a total of US$1,232,749 in respect of evacuation costs. It asserts that, following the invasion of Kuwait, Korean Air operated five flights to evacuate Korean nationals from Kuwait and Iraq. Most of the evacuees paid for the flights themselves but the Korean Government paid the fares of those passengers who could not afford the tickets. Furthermore, in January 1991, after the commencement of military operations, the Government of the Republic of Korea organized four special flights to evacuate Korean nationals. On this occasion too, the passengers paid their own fares but, because of additional war liability insurance charged, there was a shortfall between the cost of chartering the aircraft and the collected fares which was borne by the Claimant. As the evacuation flights were operated from Amman, the Claimant also incurred expenses in providing accommodation in Jordan for the evacuees. Furthermore, one of the evacuees gave birth while in Jordan and compensation is sought for the hospital costs.

53. The Claimant also seeks compensation for airfares and stopover accommodation for members of its diplomatic missions in Kuwait and Iraq; for the cost of an official visit to Amman by one of its Foreign Ministry officials from Seoul; and for one month's hotel accommodation in Amman for a member of its mission in Baghdad who had been on leave at the time of the invasion and who had been unable to return to Iraq.

8. Norway

54. Norway claims that the Norwegian Embassy in Kuwait was forced to close in September 1990 and six Embassy employees and their dependants had to be evacuated. Similarly, the Embassies in Riyhad, Damascus and Islamabad were also closed and the Embassy staff and their families evacuated. In addition, the Norwegian Government incurred costs in evacuating some 20 Norwegian nationals from the area. Some of the individuals were flown directly to Norway while others travelled overland to Jedda, from where they were repatriated. In addition to airfares, overland travel costs and handling charges incurred in Riyhad on a military flight involved in the evacuation operations, the Claimant seeks compensation for hotel expenses, food and per diem payments made to members of its diplomatic staff while on the evacuation journey. A total of 659,448 Norweigan krone is claimed in respect of evacuation costs.

9. Poland

55. In its claim, the Polish Ministry of Foreign Economic Relations asserts that in September 1990 it concluded an agreement with the Polish airline LOT to evacuate Polish nationals in Iraq and Kuwait via Amman. Pursuant to this agreement, in the period August 1990 to March 1991, LOT operated 32 flights and evacuated 2,476 people. The Claimant seeks compensation for the cost of the flights for a total of 17,337,079,800 zlotys.

56. The Polish Ministry of Foreign Affairs also concluded an agreement with LOT for the operation of four evacuation flights from Amman to evacuate Polish nationals from Iraq and Kuwait. Compensation is sought for the cost of the four flights amounting to 1,687,104,000 zlotys.

10. The Russian Federation

57. The Russian Federation asserts that at the time of the invasion and occupation of Kuwait there were 7,263 Soviet citizens living in Iraq and 880 in Kuwait. Virtually all of these individuals had been evacuated by the end of January 1991. The individuals travelled by road to Baghdad and Amman and were flown from there to the Soviet Union on flights chartered from Aeroflot and Iraqi Airways. The Claimant seeks compensation for the cost of chartering the aircraft from Iraqi Airlines and the estimated standard one way economy fare from Amman, Baghdad or Teheran to Moscow for 8,130 people. The total amount claimed is ID 228,564 in respect of the

Iraqi Airways charter and US$7,101,161 in respect of the Aeroflot operations.

58. In addition, the Russian Federation seeks compensation for the cost of the 2,700 litres of petrol used to transport the evacuees by road from Baghdad to Tehran. It does not quantify the amount of compensation sought in respect of this item.

11. Sweden

59. Sweden seeks compensation in the amount of 2,879,132 Swedish krona in respect of costs incurred in evacuating its nationals from Iraq and Kuwait. Some of the evacuees flew directly from Baghdad whilst others travelled overland to Jordan or Turkey, from where they were flown to Sweden. The amount claimed is made up of the cost of chartering flights, the cost of individual air tickets, airport taxes, excess baggage charges, the cost of hiring buses for the overland portion of the journey and the cost of food and accommodation.

12. The United States

60. The United States seeks compensation for the per diem payments it made to its Senior Commercial Officer in Kuwait and his son during the period they were kept hostage in Iraq; the subsistence allowance paid to the officer's wife and daughters, who were on holiday in Australia at the time of the invasion of Kuwait, for the period from August 1990 to January 1991; the officer's airfare to Australia; the officer and his family's airfares from Australia to the United States and stopover accommodation in January 1991; travel allowances paid to the officer in respect of his return trip; and accommodation and food allowances paid to the officer in Washington D.C. in January and February 1991 pending his new posting. A total of US$42,600 is claimed in respect of these evacuation costs.

F. Public service expenditure

1. Australia

61. Australia seeks compensation for a total of A$403,302 in respect of public service expenditures. This amount includes the salaries paid to the Department of Foreign Affairs officials staffing the Iraq/Kuwait special task force in Canberra, which "played a central role in the management of [the] Department's functions relating to the invasion and subsequent armed conflict" and the salary of one senior officer "responsible for the administrative work associated with the Iraq/Kuwait compensation process".

62. The Claimant also seeks compensation for a number of other minor public service expenditures such as travel costs for diplomats on official missions; the costs of relocating members of diplomatic missions; and overtime payments made to staff in Baghdad, Amman and Damascus.

2. India

63. India seeks compensation for the cost of establishing and maintaining the Special Kuwait Cell in its Ministry of External Affairs; for the cost of official travel, domestic and abroad, by the members of the Cell in connection with compensation work; and for the expenses incurred by the Cell in printing, copying and distributing claim forms, processing claims and sending them to the Commission.

64. In addition, compensation is sought in respect of costs incurred by the four Indian banks "designated for the task of disbursement of UNCC awards of compensation". These expenses include publicity, computerisation, manpower, postage, telecommunications, travel and miscellaneous expenses.

65. India also seeks compensation for the costs of an official mission to Amman and Dubai carried out by members of its Ministry of Interior in connection with the evacuation operations.

66. A total of 220,895,330 Indian rupees is sought in respect of public service expenditure.

3. Ireland

67. Ireland seeks compensation for a total of 252,843 Irish pounds in respect of public service expenditure. This figure includes the cost of staffing the Gulf Crisis Unit at the Department of Foreign Affairs in Dublin whose function was, inter alia, "to collate information about the general political and military situation in so far as it affected, or seemed likely to affect, the security and welfare of about 400 Irish citizens in Iraq and Kuwait ... and to liaise with the[ir] families in Ireland".

68. Compensation is also sought for salaries paid to additional staff hired by the Irish Embassies and Consulates in Baghdad, Riyadh, Amman and Nicosia; travel costs for members of the aforementioned missions; the cost of installing telephone lines for the Relatives Support Group at the Foreign Ministry; the cost of the telephone calls made from the Ministry and the cost of purchasing and transporting gas masks and chemical warfare safety equipment to the Irish Embassies in Baghdad and Amman and the cost of eight VHF portable radio sets purchased to facilitate communication between the Irish diplomatic missions in the Middle East.

69. Shortly after the invasion of Kuwait, when about 400 Irish citizens were prevented from leaving Iraq and Kuwait, the Government of Ireland decided that it would bear the costs of one ten minute telephone call per week from each person to his/her family. The Claimant seeks compensation for the cost of the telephone calls.

4. Norway

70. Norway seeks compensation in the amount of 182,262 Norwegian krone in respect of public service expenditure. These costs include travel and accommodation expenses incurred in moving diplomatic staff from Baghdad and in strengthening the Norwegian mission in Tel Aviv; overtime paid to locally employed staff in Baghdad; various travel and accommodation expenses in Norway relating to ministerial meetings and meetings with families of Norwegian nationals held hostage in Iraq; and the prepaid fees at a Norwegian boarding school for the children of one of the diplomats in Iraq who, following their parents' repatriation, no longer attended the school.

G. Other claims

1. India

71. India asserts that the Shipping Corporation of India concluded a contract to transport a load of sulphur from Bahrain to India on one of the ships used for the evacuation operations. Loading of the sulphur commenced on 15 January 1991 but, due to the commencement of military operations, the ship was called back to India by the Shipping Corporation of India before the entire cargo had been loaded. The Claimant seeks US$180,866 in compensation, representing the difference between the amount due under the charter agreement and the amount actually received in respect of the cargo carried.

2. The Republic of Korea

72. The Republic of Korea claims that it purchased gas masks for the Korean diplomatic missions in Iraq, Saudi Arabia, Jordan, the United Arab Emirates, Qatar and Bahrain and transported the safety equipment back to the Republic of Korea after the liberation of Kuwait. It seeks compensation for a total of 43,226,000 won in respect of these costs.

3. The United States

73. The United States seeks compensation for the costs incurred in preparing its claim for submission to the Commission. The amount charged is five per cent of the value of its claim, and "includes the cost of US Government attorneys, other professionals, support and secretarial staff, as well as reproduction, telecopier, telephone, courier and similar charges". A total of US$4,497 is sought in respect of claim preparation costs.

74. The United States also claims interest on the compensation awarded, running from the date of the loss to the date of the award.

III. LEGAL FRAMEWORK

75. In the First Report the Panel discussed the legal framework within which the claims of Governments and international organizations would be decided by the Commission. 8/ The discussion covered the law applicable to the category "F" claims, the procedural and evidentiary requirements imposed on the Claimants and the Panel's role in the proceedings. The Panel's findings concerning the applicable law, procedural rules and evidentiary requirements set out therein are also applicable to the claims in the present instalment.

76. In applying the aforementioned pleading and evidentiary requirements, the Panel found that within certain claims individual loss elements or portions thereof were not supported by particularized statements of claim or documentary or other appropriate evidence sufficient to demonstrate the circumstances or amount of the claimed losses in accordance with the Rules. For instance, in one claim the only evidence adduced in support of one item of loss was an explanatory statement. The Panel determined that this was insufficient of itself to discharge the burden of proof imposed on category "F" Claimants by the Rules. In this and other such cases, the Panel finds that compensation should not be awarded for the portions of the Claims in question.

IV. COMPENSABILITY OF THE CLAIMS

A. Contract

1. Prepaid rent on Embassy premises and staff residences

77. India seeks compensation for rent paid in advance for its Chancery building in Kuwait in respect of the months of the occupation of Kuwait when the members of its mission in Kuwait had been evacuated.

78. In the First Report, the Panel reviewed a claim which sought compensation for rent that a claimant had prepaid in respect of its Embassy in Kuwait which had been left vacant during the period of the occupation of Kuwait. The Panel held that "the mere permanent or temporary closure of a diplomatic mission, even in time of armed conflict, does not give rise to a claim for compensation" and that "[i]n any event ... the Claimant would have incurred the rental expenses regardless of whether Iraq invaded and occupied Kuwait." 9/ This finding was adopted by the Panel in the Second Report. 10/

79. In accordance with these findings, the Panel determines that the claim for rent paid in advance on its Chancery building in Kuwait is not compensable.

80. Austria, India and the United States seek compensation for the loss of benefit of the leases of staff residences in Kuwait during the period of

the occupation of Kuwait, in respect of which rent had been paid prior to the invasion.

81. In the Panel's view, rent paid in advance by Governments for staff residences should be considered in the same way as prepaid rent on Embassy buildings. This is due to the close link between the two types of premises: when diplomatic relations are interrupted, it is not only the premises of the diplomatic mission offices that are vacated but, inevitably, also the staff residences. The nature of diplomatic relations between States is such that a State opening a diplomatic mission and renting Embassy premises and staff residences can be considered to have assumed an inherent risk that it will lose rent paid in advance if diplomatic relations with the host State are interrupted and the mission is withdrawn. The cost of renting residences for the members of diplomatic missions can be considered an "ancillary cost" of running the mission. Furthermore, the rent was an expense that would have been incurred regardless of the invasion and occupation of Kuwait. Thus, the loss suffered was not the prepaid rent but the use of the premises. For the same reasons that the Panel found that the economic value of the loss of use of the Embassy premises was not quantifiable, because of the nature of the activities carried out by diplomatic missions, the loss in the present Claims is not amenable to monetary evaluation.

82. Accordingly, the Panel cannot recommend compensation for the portions of the claims of the Governments of Austria, India and the United States relating to prepaid rent on staff residences in Kuwait.

2. Reimbursement to diplomatic staff for loss of personal property

83. Australia, Italy, the Republic of Korea, and the United States claim that, pursuant to special national regulations, they reimbursed members of their diplomatic missions in Iraq and/or Kuwait for personal property losses. The United Kingdom asserts that it made similar payments to three British Council officials but does not explain the basis upon which the payments were made. The Claimants seek compensation for the reimbursement payments.

84. One of the Claimants in the first instalment of category "F" claims sought compensation for payments it had made to its diplomats whose property was lost or damaged in Kuwait or Iraq pursuant to the regulations applicable to the employment contract in force between it and the members of its diplomatic service. The Panel held that "reimbursements for the loss of tangible property made by the Claimants pursuant to their contractual obligations should be compensated to the extent they are adequately supported by documentary and other appropriate evidence". 11/

85. To the extent that the reimbursement claims in the present instalment were made pursuant to special decrees or laws and regulations governing the

employment contracts of members of the diplomatic service, they are compensable on the same basis as the claims in the First Report.

86. The United Kingdom does not explain the basis on which it reimbursed the British Council officers. In the absence of such information, the Panel is unable to determine whether the Claimant was under a legal obligation to make the payments, or whether the losses would otherwise be compensable. The Panel considers that the Claimant has not met the pleading standards laid down in the Rules and, therefore, cannot recommend that compensation be awarded in respect of this Claim.

3. Security contract

87. The Russian Federation claims that, at the time of the departure of the members of its diplomatic mission from Baghdad in 1991, a contract was concluded with an Iraqi national to guard the premises and car park of its Trade Representation in Baghdad. Under the contract the guard assumed strict liability for any ensuing loss or damage.

88. The Panel finds that compensation can, in principle, be awarded for reasonable measures taken to avoid or limit damage to property. However, in view of the situation in Iraq in January 1991, the conclusion of a private arrangement of the kind described in the Claim cannot be considered a reasonable measure of protection. The fact that the Claimant is seeking compensation for property looted from its Trade Representation premises highlights the ineffectiveness of this arrangement. Accordingly, the Panel is unable to recommend compensation in respect of payments made to the guard pursuant to the contract.

B. Real property

89. The Czech Republic and the Russian Federation claim that their diplomatic missions in Iraq suffered damage, allegedly as a result of military action and civil unrest during the period of the occupation of Kuwait. India makes a claim for similar losses in Kuwait. These Claimants seek compensation for the costs incurred in repairing and cleaning their missions.

90. In the First Report the Panel addressed the issue of the compensability of repairs to Embassy premises in Kuwait and Iraq. The Panel noted that paragraph 36 of Governing Council decision 7 provided that compensatory payments were available for "loss of or damage to property of a Government" and that the Governing Council had indicated that property lost either because of the "breakdown of civil order in Kuwait or Iraq [during the occupation of Kuwait]" 12/ or "because it had been left unguarded ... due to the situation in Iraq and Kuwait" 13/ was compensable. The Panel concluded that claims for repair costs could be considered as resulting directly from the invasion and occupation of Kuwait. Consequently, the Panel found such losses to be compensable. 14/

91. Furthermore, the Panel notes that, according to paragraph 34 of Governing Council decision 7, compensation will be available in respect of "any loss suffered as a result of ... [m]ilitary operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991". 15/

92. For the aforementioned reasons the Panel finds that the repair costs claimed are compensable to the extent to which they are reasonable and adequately supported by documentary or other appropriate evidence.

C. Other tangible property

93. Austria, the Czech Republic, India, Japan, Norway and the Russian Federation assert that, during the period of the occupation of Kuwait, when their Embassies and staff residences in Iraq and Kuwait were unattended following the evacuation of the members of the missions, property left therein was stolen and/or damaged and foodstuffs spoiled. The Claimants seek compensation for the cost of replacing the items in question.

94. In the First Report the Panel considered that, for the reasons given in respect of claims for damage to real property, claims for loss or damage to other tangible property located in Iraq and Kuwait should also be compensable to the extent that the loss was adequately supported by documentary or other appropriate evidence. 16/ The same reasoning applies to the Claims in the present instalment, including those for spoiled foodstuffs.

D. Payment or relief to others

1. Cash advances

95. Australia and Ireland assert that, in the months following the invasion of Kuwait, their diplomatic missions in Kuwait, Amman and Baghdad made cash advances to a number of their nationals in financial difficulty to assist them during their evacuation journey. Similarly, India claims that three of its passport offices and the Ministry of Railways made cash advances to evacuees upon their arrival in India to assist them in the final stage of their homeward journey.

96. In the First Report the Panel found that "payments by Governments for temporary and extraordinary living expenses that result from individuals' departure from Kuwait ... are directly related to Iraq's invasion and occupation of Kuwait". 17/

97. The Panel finds that the cash advances were made to assist individuals in their evacuation journey. The Panel considers cash advances to be "temporary and extraordinary expenses" and, as such, compensable.

2. Other payments

98. Cyprus claims that it reimbursed Cyprus Airways the cost of additional insurance premiums for war risk insurance on flights from Cyprus to Cairo during the period from 31 January to 2 February 1991. The Claimant has not provided any explanation of why it made this payment. The Panel, therefore, considers that in respect of this portion of its claim the Claimant has failed to meet the pleading standard imposed on claimants and the costs claimed are, therefore, not compensable.

E. Evacuation costs

99. Several Claimants seek compensation for costs incurred in evacuating their nationals and other individuals from a number of States in the Middle East following Iraq's invasion of Kuwait.

100. Paragraph 36 of Governing Council decision 7 provides that compensation is available for "losses and costs incurred by a Government in evacuating its nationals from Iraq or Kuwait". In the First Report, the Panel determined that, although the Governing Council decision did not expressly refer to costs incurred by Governments in the evacuation of individuals of nationalities other than their own, such costs would be compensable on the same basis as those incurred by Governments in the evacuation of their own nationals. 18/ The Panel also determined that, although Governing Council decision 7 only referred to costs of evacuating individuals from Iraq and Kuwait, compensation would also be awarded in respect of costs incurred in evacuating individuals from Israel and Saudi Arabia given that "military operations or (the) threat of military action" had been directed against these two States. 19/

101. In the Panel's view, compensation under this loss type should be awarded in respect of costs incurred for transport, accommodation, food and urgent medical treatment. 20/ Other items of expenditure incurred during the evacuation journey cannot be considered a necessity but are ancillary costs, such as costs of telephone calls, room service and bar and laundry bills. The Panel finds that such costs are not compensable.

102. A number of Claimants seek compensation for excess baggage charges or for the cost of transporting evacuees' baggage. In view of the fact that compensation would have been available in respect of loss of personal property had the baggage been left behind, the Panel considers such costs to be reasonable in the circumstances and, as such, compensable.

103. Australia seeks compensation for internal flights and India claims compensation for railway passes provided to evacuees upon their arrival in India to take them to their place of residence. In the First Report the concept of evacuation was interpreted in a broad manner, synonymously with repatriation. In the Panel's view, although it is arguable that purely internal travel costs should fall outside the scope of evacuation, such a

decision could operate arbitrarily in practice, discriminating on the basis of whether a direct connection existed to the evacuees' place of residence. Furthermore, in a situation of mass evacuation as occurred in India, if onward internal transportation had not been provided immediately it would have been necessary for the Government to set up temporary shelters and facilities for the tens of thousands of evacuees arriving in Bombay and New Delhi. This would have given rise to a larger claim than that for providing the railway passes. For these reasons, the Panel considers that internal evacuation costs are compensable, provided there was not a significant interruption in the evacuation journey so as to prevent it from being considered an ongoing journey.

104. Australia asserts that, rather than repatriating some of the families of the members of its diplomatic missions in various States in the Middle East, it sent them to "designated safehavens" in Europe where they spent prolonged periods of time awaiting the termination of military operations. In addition to the cost of travel to the safehavens, the Claimant seeks compensation for accommodation costs and food and living allowances paid to the dependants for the period of their stay in the safehavens. The Panel considers that the accommodation costs and allowances were paid as a result of the Claimant's independent and voluntary decision not to repatriate the dependants and as such cannot be considered evacuation expenses incurred as a direct result of Iraq's invasion and occupation of Kuwait. Therefore, the Panel only recommends compensation for the travel portion of the Claim.

105. Similarly, the United States seeks compensation for per diem payments made to its Senior Commercial Officer and his son for the period they were held hostage in Iraq; subsistence allowances paid to the officer's wife and daughters in Australia until January 1991; the family's travel costs from Australia to the United States; and travel, food and accommodation allowances paid to the officer in Washington D.C. in January and February 1991.

106. The Panel considers that the subsistence allowances paid to the Senior Commercial Officer and his son in respect of the period they were kept hostage are payments for "temporary and extraordinary" expenses that resulted from the individuals' incapacity to leave Iraq and, as such, are compensable. Similarly, the Panel considers that the cost of evacuating the Senior Commercial Officer is also a compensable cost. However, rather than returning to the United States, the officer decided to join his family in Australia. The Panel considers that his travel costs to Australia are compensable up to the cost of a flight from Baghdad to Washington, his final destination in the United States. The Panel is of the view, however, that no compensation should be awarded for the subsistence payments made to the officer's family in Australia or their travel costs back to the United States. Individuals in Australia were not in the geographical area in respect of which compensation for evacuation costs is awarded and, therefore, their travel and subsistence costs cannot be considered compensable evacuation costs. Similarly, the allowances paid in respect of

their stay in Australia and, upon their return, in the United States were not intended to cover "temporary and extraordinary living expenses that result[ed] from individuals' departure from Kuwait or Iraq during the period of 2 August 1990 to 2 March 1991" 21/ but, rather, were "discretionary payments for ongoing ordinary living expenses that are incurred after a person has left the region" 22/ and, as such, are not compensable.

107. Cyprus claims compensation for increased insurance costs for three special flights operated by Cyprus Airways to evacuate Cypriot nationals from Iraq and Kuwait on 15 January 1991 and for two scheduled flights to Cairo in the week of 16 January 1991. The charter agreement between the Claimant and Cyprus Airways in respect of the three evacuation flights provides that the Claimant must reimburse Cyprus Airways "all costs and expenses involved or arising out of" the operation of the flights. It appears that, because of the start of military operations, Cyprus Airways' insurers increased the premium on the flights. The Panel believes this increase constitutes a "cost and expense" within the meaning of the charter agreement which the Claimant was contractually obliged to bear. It is, therefore, an unavoidable expense relating to the three special evacuation flights.

108. On the other hand, no explanation was provided by the Claimant of why it had to bear the increased insurance premium on the scheduled flights from Cyprus to Cairo. These flights were not part of the evacuation operations. In the absence of such an explanation, the Panel considers that the Claimant has failed to meet the pleading requirements in respect of this portion of the Claim and, accordingly, only recommends compensation in respect of the increased insurance premium relating to the three evacuation flights.

109. A number of Claimants seek compensation for costs incurred after the liberation of Kuwait in bringing the members of their diplomatic missions, their dependants and other individuals back to the States in the Middle East from where they had been evacuated.

110. The Panel notes that the language of paragraph 34(d) of Governing Council decision 7 only refers to loss suffered as a result of "departure of persons from or their inability to leave Iraq or Kuwait during [the period from 2 August 1990 to 2 March 1991]". Similarly, paragraph 36 of that decision only refers to "losses and costs incurred by a Government in evacuating its nationals from Iraq or Kuwait".

111. The Panel finds that costs incurred in bringing individuals back to the States from where they had been evacuated cannot be considered an evacuation cost and, therefore, are not compensable.

112. The Polish Ministry of Foreign Economic Relations seeks compensation for the costs incurred in chartering flights to evacuate over two thousand

Polish nationals from Iraq and Kuwait. The Claimant's response to the procedural order of 27 February showed that a number of companies employing Polish nationals in Iraq and Kuwait have reimbursed the Claimant for the cost of evacuating their employees. In view of this, the Panel considers that only the balance of the cost of chartering the flights, once the payments received from employers and other sources are deducted, is compensable.

113. The Russian Federation has not submitted any evidence in support of its claim for evacuation costs. Accordingly, the Panel is unable to recommend any compensation in respect of this portion of the Russian Federation's claim. The Panel notes, however, that the same evacuation operations form the basis of a claim submitted in category "E" through the Government of the Russian Federation.

F. Public service expenditure

114. Australia asserts that it set up a Special Task Force at its Department of Foreign Affairs in Canberra which coordinated the department's activities in relation to the Kuwait crisis. It seeks compensation for the salaries paid to department officers assigned to the Task Force. Similarly, Ireland seeks compensation for the salaries paid to the Department of Foreign Affairs officers assigned to the Gulf Crisis Unit in Dublin.

115. The Panel notes that both claims seek compensation for salaries paid to individuals who were members of the Claimants' permanent staff at the time of the invasion of Kuwait. Their salaries are, therefore, an expense which would have been incurred regardless of the invasion. What the Claimants actually lost was the benefit of the services of the officers in their ordinary posts. However, the nature of the work carried out by members of Foreign Ministries is such that this lost benefit cannot be valued in monetary terms. Accordingly, the Panel finds that these portions of the Australian and Irish claims are not compensable.

116. Australia also seeks compensation for the salary paid to the Department of External Affairs officer responsible for the administrative work associated with the compensation process. Similarly, India seeks compensation for the costs of establishing and running the Special Kuwait Cell of its Ministry of Foreign Affairs, the unit entrusted with processing claims, and the costs incurred by the four banks designated by the Government to disburse awards made by the Commission.

117. The Panel notes that paragraph I.1 of Governing Council decision 18 provides that

> "Governments may offset their costs of processing claims by deducting a small fee from payments made to claimants ... Such fees shall be commensurate with the actual expenditure of the Governments. In the

case of awards payable to claimants in categories "A", "B" and "C", the fees should not exceed 1.5 per cent, and for awards payable to claimants in categories "D", "E" and "F", the fees should not exceed 3 per cent." 23/

118. The Panel understands that it was intended that this fee be the sole compensation to which Governments are entitled in respect of their claim processing expenditures. In the Panel's view, the costs claimed by Australia and India constitute claim processing expenses and, as such, are not compensable.

119. Ireland claims that it agreed to pay a weekly ten minute telephone call to Ireland for Irish nationals who had been prevented from leaving Kuwait following the invasion and occupation of Kuwait. In view of the fact that the individuals were detained in Kuwait against their will in precarious and uncertain conditions, the Panel considers that the Claimant's decision to facilitate communication with the outside world was reasonable in the circumstances and the resulting costs should, accordingly, be compensable. The Panel finds, however, that compensation should only be recommended for a reasonable portion of these costs.

120. Australia, Ireland, India and Norway also claim compensation for public service expenditures of a general nature, such as costs of official missions, costs of transfer of diplomats, and salaries for additional staff and overtime payments made to members of their diplomatic missions in the Middle East.

121. The Panel considers that these expenses were incurred by States in the exercise of protective functions in times of emergency. As these tasks are an integral part of the functions of diplomatic missions they cannot, in the Panel's view, be considered to be of the extraordinary nature that would warrant their compensability.

122. Ireland seeks compensation for the cost of purchasing VHF radio equipment for its Embassies in the Middle East. The Panel considers that safety measures taken by Claimants for the protection of individuals and property are a compensable expense, provided they are reasonable in relation to the type of risk to which the individual and/or property is exposed. The Panel does not consider VHF radios to constitute a reasonable or effective measure of protection in the prevailing circumstances. The costs claimed, therefore, are not compensable.

123. Norway also seeks compensation for boarding school fees paid in advance for the children of one of its diplomats in Iraq. The children left the school after their parents' repatriation following the closure of the mission. The Panel does not consider this to be a compensable item because the fact that the children did not benefit from the school was due to their parents' independent decision to withdraw them from the school.

G. Other claims

124. India seeks compensation for the shortfall in revenue suffered by the Shipping Corporation of India in respect of a charter contract it concluded for the carriage of a load of sulphur from Bahrain to India. The Shipping Corporation of India headquarters recalled the ship from its load point in Bahrain on 15 January 1991 due to the commencement of military operations, before the entirety of the cargo had been loaded. Payment was received only in respect of the portion of the sulphur actually transported.

125. The Panel notes that the Indian Ministry of External Affairs has not reimbursed the Shipping Corporation of India, an independent legal entity, for this loss of earnings. The Claimant has not, therefore, suffered any loss. Accordingly, in the absence of any assignment of the Shipping Corporation of India's claim, the Panel considers that this portion of the claim of the Government of India is not compensable.

V. OTHER ISSUES

A. Currency exchange rates

126. As in the first instalment, some of the Claimants in the present instalment have incurred losses or stated their claims in currencies other than United States dollars. As the Commission issues awards in United States dollars, the Panel is required to determine the appropriate rate of exchange. In the First Report the Panel determined that adopting the currency exchange rate as at the date of loss was the most appropriate method of calculating the applicable exchange rate. The losses had occurred during the period of Iraq's occupation of Kuwait, namely from 2 August 1990 to 2 March 1991. The Panel adopted 16 November 1990, the midpoint of the occupation period, as the date of loss.

127. The Panel had also noted that special circumstances existed in relation to the exchange rate to be adopted for losses suffered in Kuwaiti dinars. As the invasion and occupation of Kuwait had caused a significant disturbance of the exchange rate for the Kuwaiti dinar during the period of the occupation, the Panel adopted the exchange rate for the Kuwaiti dinar that prevailed immediately prior to the invasion. 24/

128. The Panel finds that the majority of losses for which compensation is sought in the present instalment also occurred throughout the period of the occupation of Kuwait but, in general, it was not possible to identify the precise date of their occurrence. Therefore, in this instance, the Panel also considers 16 November 1990, the midpoint of the occupation, to be the most appropriate date for determining the applicable exchange rate. For the reasons given above, 1 August 1990 is the date adopted for determining the exchange rate for Kuwaiti dinars.

129. The rates of exchange used as at 1 August 1990 for the Kuwaiti dinar and 16 November 1990 for other currencies are the average monthly rates as reported in the United Nations Monthly Bulletin of Statistics of April 1991. 25/

B. Interest

130. In decision 16 the Governing Council stated that "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award." The decision added that "the methods of calculation and of payment of interest will be considered by the Governing Council at the appropriate time" and that "[i]nterest will be paid after the principal amount of awards". 26/ Thus, at this stage, the Panel need only set the date from which interest will run. For the same reasons that it adopted 16 November 1990 as the date of loss for the purpose of determining exchange rates, the Panel considers that the same date should be used for calculating interest. Accordingly, the Panel determines that interest be awarded on the Claims as of 16 November 1990.

C. Claims preparation costs

131. In a letter dated 6 May 1998, the Panel was notified by the Executive Secretary of the Commission that the Governing Council intended to resolve the issue of claims preparation costs at a future date. Accordingly, the Panel takes no action with respect to claims for such costs at this stage.

VI. QUANTIFICATION OF THE CLAIMS

132. As discussed above, the Panel considers that certain loss elements within the Claims should not be compensated because they fail to meet either the Commission's pleading and evidentiary standards or the directness requirements as formulated in Security Council resolution 687 (1991).

133. In many of the Claims, the documentary or other evidence submitted established that an alleged loss had, in fact, occurred. The evidence was insufficient, however, to demonstrate with a reasonable degree of certainty the amount of the loss. In such cases, the Panel, in conformity with general principles of law, exercised its discretion in assessing the amount of compensation to be recommended. In exercising such discretion, the Panel took into account the level and type of evidence that should reasonably be required of a claimant given the circumstances prevailing at the time of the loss, particularly in Iraq and Kuwait. 27/

134. With respect to the loss elements that the Panel considers to be compensable, the Panel verified that the losses had, in fact, occurred and then quantified such losses. The Panel was assisted in this task by expert loss adjusting consultants and the secretariat. Initially, the Panel

undertook a careful examination of the statements of claim and evidence filed by the Claimants. As explained in paragraph 9, supra, the Panel then required certain Claimants to answer questions and to submit additional documents that it deemed necessary to quantify the amount of the alleged losses. In addition to verifying that the claimed losses had, in fact, occurred, the Panel also considered the reasonableness of the Claimants' conduct and of the amounts claimed. For example, in relation to claims for evacuation costs, the Panel only recommended compensation for one-way economy fares.

135. In quantifying the losses, the Panel weighed the amount and type of evidence submitted in support of the claimed losses and received advice from the loss adjusters on the nature and quantity of evidence that a claimant would normally be expected to submit in comparable emergency situations. In reaching the figures of the recommended awards, the Panel adopted general principles of loss adjusting such as reasonableness of costs incurred, depreciation and betterment. For example, in relation to claims for lost or damaged property where the amount claimed was the replacement value, reductions were made to take into account the age of the property in question at the time the loss or damage occurred. In respect of claims for reimbursements for lost or damaged property, deductions were made if sufficient evidence supporting the underlying losses had not been provided, or to reflect depreciation or part use of the lost property.

136. During the on-site inspection in India, primary material supporting each item of expenditure for which compensation was sought in the Indian Ministry of External Affairs claim was reviewed. Individuals with first hand knowledge of the evacuation operations and of the documents supporting the Claim were interviewed at the Ministry and at the Air India and Shipping Corporation of India headquarters.

137. In order to verify and value the portion of the Claim relating to evacuation costs, senior financial officers from Air India and the Shipping Corporation of India were interviewed. Invoices, landing records, relevant correspondence and profit and loss accounts and budgets for the relevant years were examined in order to verify the costs and expenses underlying the charter prices charged to the Government of India.

138. Documents were also inspected at the offices of the Chief Controller of Accounts of the Ministry of External Affairs, who held the invoices and payment authorizations underlying the expenditures incurred by the Indian Embassies and Consulates in the Middle East.

139. On the basis of the information acquired and verified in the course of the on-site inspection, the amounts claimed by the Indian Ministry of External Affairs were allowed to the extent they were supported by appropriate documentary or other evidence and accounting figures.

140. On the basis of its review and evaluation of the Claims, the Panel makes the following determinations concerning the quantification of the Claims, summarized by general loss type in the table below. The amounts are stated in United States dollars.

QUANTIFICATION BY LOSS ELEMENT								
Claimant	Contract	Real property	Tangible property	Payment or relief to others	Evacuation costs	Public service expenditures	Other	Total amount recommended
Australia, Claim I	7,433				66,695	0		74,128
Australia, Claim II					10,506			10,506
Austria	0		40,074					40,074
Cyprus				0	60,581			60,581
The Czech Republic		1,392	1,826		1,515			4,733
India	0	251,583	286,910	2,320,339	89,762,666	0	0	92,621,397
Ireland					140,155	74,956		215,111
Italy	579,955							579,955
Japan			70,501		1,297,383			1,367,884
Korea	0				1,226,772		0	1,226,772
Norway			15,094		4,175	3,880		23,149
Poland: Ministry of Foreign Economic Relations					719,723			719,723
Poland: Ministry of Foreign Affairs					177,599			177,599
The Russian Federation	0	8,079	51,880		0			59,959
Sweden					465,802			465,802
United Kingdom	0							0
United States	21,293				16,710			38,003
Total								97,666,367

VII. RECOMMENDATIONS

141. On the basis of the foregoing, the Panel recommends that the following amounts be awarded as compensation for losses incurred by the Claimants as a direct result of Iraq's invasion and occupation of Kuwait:

(a) Australia for its Department of Foreign Affairs and Trade: US$74,128 for Claim I and US$10,506 for Claim II;

(b) The Republic of Austria for its Foreign Trade Department: US$40,074;

(c) The Republic of Cyprus for its Ministry of Communications and Works: US$60,581;

(d) The Czech Republic for its Ministry of Foreign Affairs: US$4,733;

(e) The Republic of India for its Ministry of External Affairs: US$92,621,397;

(f) Ireland for its Department of Foreign Affairs: US$215,111;

(g) The Italian Republic for its Ministry of Foreign Affairs: US$579,955;

(h) Japan for its Ministry of Foreign Affairs: US$1,367,884;

(i) The Republic of Korea for its Ministry of Foreign Affairs: US$1,226,772;

(j) The Kingdom of Norway for its Ministry of Foreign Affairs: US$23,149;

(k) The Republic of Poland for its Ministry of Foreign Economic Relations, Office of Budget and Administration: US$719,723 and for its Ministry of Foreign Affairs, Administration and Finance Department: US$177,590;

(l) The Russian Federation for its Ministry of Foreign Economic Relations: US$59,959;

(m) The Kingdom of Sweden for its Ministry for Foreign Affairs: US$445,802;

(n) The United Kingdom of Great Britain and Northern Ireland for its British Council: nil; and

(o) The United States of America for its Department of Commerce: US$38,003.

Geneva, 24 July 1998

(Signed) Bjorn Haug
Chairman

(Signed) Georges Abi-Saab
Commissioner

(Signed) Michael J. Bonell
Commissioner

Notes

1/ Governing Council decision 10, "Provisional Rules for Claims Procedure" (S/AC.26/1992/10).

2/ The amounts claimed are stated in United States dollars although many claims were originally expressed in other currencies. In respect of claims filed in other denominations, the United States dollar amounts have been calculated by using the August 1990 rates of exchange as indicated in the United Nations Monthly Bulletin of Statistics.

3/ The Czech Republic's claim includes a statement explaining that the Czech and Slovak Federal Republic ceased to exist on 31 December 1992 and was succeeded by the Czech Republic and the Slovak Republics on 1 January 1993. On the basis of agreements concluded at the time of the separation, the Czechoslovak Embassy and Embassy residence in Baghdad became the property of the Czech Republic. Accordingly, although it had been the Federal Republic that had suffered the losses in respect of which compensation is claimed, the Czech Republic is the proper and sole claimant in respect of these losses.

4/ Category "C" claims are individual claims for damages up to US$100,000 while category "D" claims are individual claims for damages above US$100,000. Pursuant to Governing Council decision 1 (S/AC.26/1991/1), as confirmed in paragraph 3 of Governing Council decision 13 (S/AC.26/1992/13), questions of multiple recovery do not arise in relation to payments made under category "A" (departure claims). It was, therefore, not necessary to carry out cross-category checks between the sections of Claims seeking compensation for evacuation costs and departure claims in category "A".

5/ Three Irish nationals have filed category "C" claims in respect of departure costs and five Italian nationals have filed category "C" claims for personal property losses.

6/ The "C" Panel has not yet recommended awards in two of the category "C" claims filed by Italian nationals and one claim filed by an Irish national in respect of losses for which they have been reimbursed by their respective Governments. Accordingly, it is not possible, at this stage, to make deductions in respect of the "C" claims from the Italian Ministry of Foreign Affairs and the Irish Department of Foreign Affairs claims. Appropriate amendments, if any, will be made to the recommended awards as soon as the "C" Panel has resolved these claims.

7/ The Claimant had categorized the costs incurred in cleaning and repairing the Embassy building and residences as a public service expenditure, but the Panel recategorized this portion of the claim as a real property loss.

8/ "Report and Recommendations made by the Panel of Commissioners concerning Part One of the First Instalment of Claims by Governments and International Organizations (Category 'F' Claims)" (S/AC.26/1997/6), ("the First Report"), paras 47-64. See also "Report and Recommendations made by the Panel of Commissioners Concerning Part Two of the First Instalment of Claims by Governments and International Organizations (Category 'F' Claims)" (S/AC.26/1998/4), ("the Second Report"), para. 45.

9/ The First Report, para. 74.

10/ The Second Report, paras. 55-56.

11/ The First Report, para. 68.

12/ Governing Council decision 7, "Criteria for Additional Categories of Claims" (S/AC.26/1991/7/Rev.1), para. 34(d).

13/ Governing Council decision 9, "Propositions and Conclusions on Compensation for Business Losses: Types of Damages and Their Valuation" (S/AC.26/1992/9), para.13.

14/ The First Report, paras.71-73 and reference to Marjorie Whiteman, Damages in International Law (Washington D.C., United States Government Printing Office, 1943) at footnote 30.

15/ See also, "Report and Recommendations Made by the Panel of Commissioners Appointed to Review the Well Blow Out Control Claim", (S/AC.26/1996/5/Annex), paras 85-87 where the Panel found that Iraq was liable "for any direct loss, damage or injury whether caused by its own or by the coalition armed forces".

16/ The First Report, paras. 76-78.

17/ The First Report, para. 85.

18/ The First Report, para. 92.

19/ The First Report, paras. 93-96.

20/ The Panel notes that certain claimants are seeking compensation for payments made to Iraqi Airlines for the chartering of aircraft for evacuation operations. Such payments do not raise any question of violation of the embargo imposed on Iraq because, at its fifth meeting held on 31 August 1990, the Sanctions Committee decided that flights carrying passengers only would not be in contravention of Security Council resolution 661 (1990) (S/AC.25/SR.5, 12 September 1990).

21/ The First Report, para. 85.

22/ Ibid.

23/ Governing Council decision 18, "Distribution of Payments and Transparency" [S/AC.26/Dec.18(1994)].

24/ The First Report, paras. 99-102.

25/ United Nations Monthly Bulletin of Statistics, Vol. XLV, No. 4, April 1991, (ST/ESA/STAT/SER.1/220). As the Bulletin did not include exchange rates for the Polish zloty and the Russian rouble, appropriate commercial exchange rates were used for these currencies.

26/ Governing Council decision 16, "Awards of Interest", (S/AC.26/1992/16).

27/ See the First Report, para. 62 and the reference to Article 7.4.3.(3) of the UNIDROIT Principles of International Commercial Contracts therein.